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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FEDERAL TRADE COMMISSION,
STATE OF ARIZONA,
STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA,
STATE OF ILLINOIS,
STATE OF MARYLAND,
STATE OF NEVADA,
STATE OF NEW MEXICO,
STATE OF OREGON, and
STATE OF WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants.

Case No.: 3:24-cv-00347-AN

**DECLARATION OF ROHAN PAI IN
SUPPORT OF PLAINTIFFS' MOTION
TO STRIKE UNTIMELY AND
IMPROPER REPORTS OF DR. MARK
ISRAEL**

I, Rohan Pai, declare as follows:

1. I am over the age of 18 and counsel of record for Plaintiff Federal Trade Commission in the above-captioned action. I make this declaration based on personal knowledge. I make this declaration in support of Plaintiffs' Motion to Strike Untimely and

PAI DECLARATION

Improper Reports of Dr. Mark Israel.

2. Attached to this declaration as Exhibit A is a true and correct copy of an email from Jason Ewart to Rohan Pai, et al., dated July 21, 2024.

3. Attached to this declaration as Exhibit B are excerpts of the Corrected Expert Report of Dr. Mark A. Israel, dated July 20, 2024, with tracked changes, which was provided by Defendants to counsel for Plaintiffs as an attachment to the email at Exhibit A.

4. Attached to this declaration as Exhibit C is an email from Jason Ewart to Rohan Pai, et al., dated July 30, 2024.

5. Attached to this declaration as Exhibit D is the Expert Surrebuttal Report of Dr. Mark A. Israel, dated July 30, 2024, which was provided by Defendants to counsel for Plaintiffs as an attachment to the email at Exhibit C.

6. Attached to this declaration as Exhibit E are excerpts of the deposition of Dr. Mark A. Israel taken July 22, 2024.

7. Attached to this declaration as Exhibit F are excerpts of the Expert Report of Dr. Mark A. Israel, dated July 1, 2024.

8. Attached to this declaration as Exhibit G is the Scheduling Order in *In re Kroger Co.*, Docket No. 9428 (FTC Mar. 20, 2024).

9. Defendants, who are also Respondents in *In re Kroger Co.*, Docket No. 9428 (FTC), have to date not sought leave from the administrative law judge in that action to submit a surrebuttal expert report or otherwise submit untimely expert reports.

10. Though Plaintiffs in the case at bar have coordinated fact depositions with counsel for the states of Colorado and Washington in their own state court lawsuits to halt Defendants' proposed transaction, the record of each proceeding is distinct, involving different discovery

PAI DECLARATION

requests, deposition notices, third-party subpoenas, and requests for production. To the best of my knowledge, the record in the case at bar does not include and Defendants have not produced the expert reports of Dr. Israel in the Colorado and Washington actions. Though Defendants produced the expert reports of Dr. Nitin Dua in the Colorado and Washington proceedings, Defendants have not provided back-up materials presumably served with Dr. Dua's reports, and on information and belief those back-up materials are subject to protective orders in the Colorado and Washington proceedings.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 2, 2024, in Washington, D.C.

/s/ Rohan Pai

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